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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,134	07/25/2003	Michael J. Curtis	119-P-03	9376
40801	7590	12/07/2005		
NICHOLAS A. BRANNEN 104 SOUTH MAIN STREET, SUITE 300 FOND DU LAC, WI 54935			EXAMINER WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/626,134

Applicant(s)

CURTIS, MICHAEL J.

Examiner

Dave Willse

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-20, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 is/are allowed.
- 6) ☒ Claim(s) 17-19 and 25 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8-4-05</u>  | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3738

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The further limitations on lines 3-5 of said claim are nowhere to be found in the original disclosure and appear to contradict the specification at page 9, lines 16-20. Moreover, the Applicant has failed to point out the support in the original disclosure for each of the newly presented claims (MPEP § 714.02).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 18, and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dix et al., GB 2 298 795 A, which discloses a pylon **64**, a pyramidal adaptor **25** (Figures 3B and 3C; page 5, lines 10-13), and an angularly adjustable coupling assembly comprising a first end with a collared clamp **62** (page 6, last full paragraph; Figures 5A-5C) and a base **61** and a second end with a receiver **42** (Figure 4B) for being removably connected to the pyramidal adaptor **25** (Figures 6A and 6B; page 7, line 11 et seq.) and a base **42A** and/or **58** angularly adjustably connected to the first end base **61** (page 6, lines 19-21) about an axis of rotation which can be

*fixed* via a pair of opposed bolts (abstract: lines 7-9; page 6, lines 16-18; page 7, lines 1-3).

Regarding claim 25, the fastener can be viewed as the spherical bearing **58**, with the mounting stub **42A** corresponding to the second end base as claimed.

Claims 17-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lacroix, US 5,913,901. The collared clamp at the bottom of lower arc section **38** is *capable* of being connected to a pylon, whether or not such was the intent.

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 26 is allowed.

The Applicant's remarks have been reviewed. The Applicant asserts that "[n]o pylon or collared clamp is shown in Lacroix" (page 23, line 9, of the Applicant's response received on January 18, 2005) but appears to be overlooking the fact that the pyramidal adaptor **36** is a "pylon attachment point" (Lacroix: column 4, line 31). The Applicant's position may be that the collared formation at the bottom of lower arc section **38** in conjunction with the mating screw **34** (Figures 1-3 and 5) is not encompassed by the term "collared clamp", but it is the Applicant's burden to precisely define the invention, and not the examiner's (*In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997)). It is further noted that the word "pylon" is (broadly) defined as "[a] simple prosthesis, usually without joints, for a lower limb amputation" (*Stedman's Medical Dictionary*, 26<sup>th</sup> ed.: 1995). Because the above newly applied patent document was cited by the Applicant in the Information Disclosure Statement received on

August 4, 2005, with the fee set forth in 37 CFR 1.17(p), under MPEP §§ 706.07(a) and 609.04(b):

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**